LEGAL REVIEW NOTE

Bill No.: 277

LC#: LC0753, To Legal Review Copy, as of December 26, 2016

Short Title: Revise speedy trial laws for felony offenses.

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CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).

Legal Reviewer Comments:

LC 0753 amends 46-13-401, MCA, by establishing a statutory trigger for analyzing speedy trial claims at the date of the defendant's initial appearance or the entry of the defendant's plea. It also requires 200 days to pass before a court could consider a motion to dismiss for lack of a speedy trial for felony offenses. Section 46-13-401, MCA, is the only code section that currently addresses speedy trial rights and it does not apply to felony offenses. *City of Helena v. Heppner*, 2015 MT 15, 378 Mont. 68, 341 P.3d 640. This section provides that a misdemeanor offense

must be dismissed if the defendant is not brought to trial within 6 months after the entry of a plea unless good cause to the contrary is shown and the delay wasn't a result of the defendant's motion.

The right to a speedy trial derives from the Sixth and Fourteenth Amendments of the U.S. Constitution and Article II, section 24, of the Montana Constitution. The Sixth Amendment of the U.S. Constitution, provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . ." Likewise, Article II, section 24, of the Montana Constitution provides that "in all criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury . . ."

Both the U.S. and the Montana Supreme Courts have adopted a framework for analyzing speedy trial claims. Guided by a similar approach adopted by the U.S. Supreme Court, Montana revised its framework for assessing speedy trial claims under the Montana Constitution in a decision known as *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815. In *Ariegwe*, the Court articulated a four-part balancing test used to assess whether a speedy trial violation has occurred: (1) the length of the delay; (2) the reason for the delay; (3) assertion of the right; and (4) prejudice to the defendant." *Id.* at ¶ 34.

Under the first factor, the trigger date for whether a speedy trial analysis will be conducted is the date the defendant becomes an accused. The Montana Supreme Court reiterated in *Ariegwe* that speedy trial protections are "activated when a criminal prosecution has begun and extends to those persons who have been formally accused or charged in the course of that prosecution whether that accusation be by arrest, the filing of a complaint, or by indictment or information." *Id.* at ¶ 4; *see also St. v. Longhorn*, 2002 MT 135, 310 Mont. 172, 49 P.3d 48, *overruled on other grounds* (holding that the analysis of the length of the delay begins from the time charges are filed until the date of the defendant's trial). In addition, before a speedy trial analysis will be conducted, it must be shown the "interval between accusation and trial is sufficient to trigger the four-factor balancing test." *Ariegwe*, ¶ 39. In Montana, 200 days must pass between the date the defendant becomes an accused and the date of the trial before a speedy trial analysis is conducted. *Id.* at ¶ 41.

The trigger date for a speedy trial analysis is similar under federal law. For example, in 1971 the U.S. Supreme Court held that speedy trial rights do not attach until the defendant becomes an accused, stating that "it is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment." *U.S. v. Marion*, 404 U.S. 307, 320 (1971); *see also Doggett v. U.S.*, 505 U.S. 647 (1992) (providing that an "accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay . . .").

As currently drafted, LC 0753 provides a statutory trigger point and timeframe for assessing speedy trial claims similar to that provided for misdemeanor offenses in 46-13-401, MCA. However, this draft raises potential legal issues regarding whether minimum guarantees provided by the U.S. and Montana Constitutions to individuals accused of committing criminal offenses

are satisfied. Because the current language only includes the date of the initial appearance or the date of the entry of the plea as triggers for the speedy trial analysis, the language appears to conflict with decisions by the U.S. and Montana Supreme Courts cited above that afford speedy trial guarantees to those "who have been formally accused or charged in the course of that prosecution whether that accusation be by arrest, the filing of a complaint, or by indictment or information." *Ariegwe*, ¶ 4.

Requester Comments:

The Sixth Amendment of the U.S. Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." Article II, Section 24 of the Montana Constitution provides that "In all criminal prosecutions the accused shall have the right to . . . a speedy public trial . . . ." In examining the right to a speedy trial, courts and legislatures have set forth varied decisions and laws concerning the contours of the right. Those contours include questions of how the right might apply to cases of different magnitudes and different complexities, or how much time must pass before a defendant's trial is considered to have occurred in less than a speedy fashion.

LC 0753 addresses two aspects of the speedy trial right: a time threshold, and when to begin the so-named "speedy trial clock." The constitutional speedy trial provisions do not readily answer these questions – they simply provide that "an accused" has a right to a "speedy trial." In the absence of guiding statutes or rules of procedure, these phrases present judges and lawmakers with questions. For instance: Does the use of the word "accused" mean that the clock begins the moment an individual is charged with a crime, or does it begin the moment the judicial process actually comes to bear on that person?

Whenever courts have engaged in an in-depth analysis of the origins and intent behind the right to a speedy trial they have recognized that the right protects primarily against the evils of incarceration prior to trial and the anxiety and concern accompanying public arrest. While some courts have taken as a given that the right begins at the point when an individual is charged with a crime, their decisions often lack in-depth analysis as to the type of protection the right is designed to provide or fail to connect that type of protection with the evils at which the right is aimed.

As noted by the legal review note accompanying LC 0753, the Montana Supreme Court set forth an extensive review of the speedy trial analysis in *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815. The *Ariegwe* opinion is extremely lengthy and attempts to provide a framework for the numerous questions that arise in a speedy trial analysis, such as establishing a 200-day threshold length of time for asserting the right and giving guidance on how courts might assess various types of delay that arise in a criminal case. In its exhaustiveness, the *Ariegwe* opinion necessarily lacked a deep discussion of any one facet of the speedy trial analysis. Thus, the Court in *Ariegwe* simply cited cases that mark the moment of "accusation" as the start of the speedy trial clock without setting forth any principles that support beginning the clock at that point, citing *State v. Longhorn*, 2002 MT 135, 310 Mont. 172, 49 P.3d 48, *State v. Larson*, 191 Mont. 257, 623 P.2d 954 (1981), and *U.S. v. Marion*, 404 U.S. 307, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971). The cases *Ariegwe* cites as precedent for using "accusation" as a starting point likewise contain no discussion as to why the protections of the right must begin at that time.

In contrast, when we look back at some of the earliest U.S. Supreme Court cases on which these cases rely we find a discussion of the underpinnings for the speedy trial right that suggests the onset of pre-trial incarceration is the proper starting point for the speedy trial clock. Of those early cases, the Court's most complete examination of the historical basis behind the right to a speedy trial upholds the right as a

protection for those suffering "prolonged detention without trial." *Klopfer v. North Carolina*, 386 U.S. 213, 224, 87 S. Ct. 988, 994, 18 L. Ed. 2d 1, 8 (1967).

It is not uncommon for legislatures to enact laws that provide details to constitutional rights. The Fourth Amendment protects against "unreasonable searches and seizures" without a warrant. Section 46-5-220, MCA, provides details as to who may apply for the warrant and who may issue it, and § 46-5-228, MCA, provides details as to how the warrant may be executed. The Fifth Amendment's double jeopardy protection is given specificity in Montana law in § 46-11-503, MCA; Chapter 9 of Title 46 of the MCA provides the specific considerations that a Court must entertain when applying the Eighth Amendment's prohibition against "Excessive bail." Statutes enacted by this legislature are presumed constitutional. Rather than presenting a conflict with the constitutional right to a speedy trial, LC 0753 simply gives our courts guidance as to some of the contours of that right.

As such, the provisions proposed by LC 0753 present no conflict with either the U.S. or Montana's constitution and simply gives future courts guidance for two of the many particulars of the speedy trial right. The U.S. Supreme Court recognized this legislature's authority in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). In *Barker*, the Court noted that the constitutional speedy trial right is "amorphous" and "slippery," and noted that the constitution does not demand a specific number of days or months. The Court provided that the "States, of course, are free to prescribe a reasonable period consistent with constitutional standards, but our approach must be less precise." *Barker*, 407 U.S. at 523, 92 S. Ct. at 2188. Thus, the 200-day threshold set forth by LC 0753 presents no constitutional concerns. Likewise, the legislation's starting point of the speedy trial clock remains consistent with constitutional standards since the speedy trial right is founded on protection from "prolonged detention without trial". *Klopfer*, 386 U.S. at 224, 87 S. Ct. at 994, 18 L. Ed. 2d at 8.

That the U.S. Constitution's speedy trial right begins the moment at which an individual comes face to face with the criminal justice system was clearly expressed very recently in the U.S. Supreme Court case of *Betterman v. Montana*, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (2016). In *Betterman*, the Court looked at a speedy trial case from Montana and stated that the Sixth Amendment's speedy trial right "protects the accused from arrest or indictment through trial . . . ." *Betterman*, 136 S. Ct. at 1612, 194 L. Ed. 2d at 729. In looking at the Constitutional Framers' comprehension of the right, the Court quoted Sir Edward Coke's Institutes of the Laws of England and once again noted the right's concern for an individual "wasted by long imprisonment." The *Betterman* opinion explicitly acknowledges that "pre-arrest – [is] a stage at which the right to a speedy trial does not arise," and any problems created by the passage of time between charging and arrest must be addressed by other checks and balances (such as the Due Process Clause). *Betterman*, 136 S. Ct. at 1615, 194 L. Ed. 2d at 732.

Furthermore, recognizing that states may impose different specifications on the speedy trial right, the Court in *Betterman* notes 24 provisions where States have imposed their own unique contours on the speedy trial right. *Betterman*, 136 S. Ct. at 1616 n. 7, 194 L. Ed. 2d at 733 n. 7. For example, Rule 45 of Alaska's Criminal Procedure Rules sets the speedy trial time limit at 120 days and states that in typical cases the clock begins to run "from the date the charging document is served upon the defendant." A Colorado statute sets its clock to run for six months, starting from the entry of a plea of not guilty. Colo. Rev. Stat. § 18-1-405. Illinois' legislature has provided that their state's speedy trial right applies from the date an individual "was taken into custody" and provides different time periods for those who remain incarcerated as opposed to those released on bail or recognizance. Ill. Comp. Stat., ch. 725, § 5 / 103-5.

Thus, we cannot take the point of charging or accusation as the constitutional mandate for the starting point of the speedy trial clock, and we may say that the Court's opinion in *Betterman* strongly supports

the position that LC 0753 is a legitimate exercise by the legislature of establishing both a 200-day threshold and an initial appearance / plea entry starting point as particulars of the speedy trial right held by the citizens of Montana.